

# **NARA Regulations for Electronic Mail Records:**

## **1. Background**

Government agencies must manage records created or received on electronic mail systems in accordance with the provisions and following the standards outlined in 36 C.F.R., part 1234 and as it pertains to the adequacy of documentation, recordkeeping requirements, agency records management responsibilities, and records disposition (36 CFR parts 1220, 1222, and 1228). The general policy regarding electronic records in the Federal Government requires all government employees and contractors by law to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency.

The National Archives and Records Administration recently issued a “Final Rule on the Disposal of Transitory Email Records” providing agencies with guidance on defining and maintaining short-term electronic mail records. As part of NARA’s Records Management Initiatives to redesign Federal Records Management, this rule authorizes agencies to dispose of short-term electronic mail (email) records without creating a separate paper or electronic recordkeeping copy as was required under NARA’s old regulation.

## **2. Electronic Email Records**

- a.** Electronic email records are documents created or received on an electronic mail system including brief notes, more formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted by message.
- b.** In *Armstrong v. Executive Office of the President* (1993), the U.S. Court of Appeals ruled that:
  - 1)** Electronic version of documents are Federal records
  - 2)** Email is different than paper copy because it contains routing and time stamp information (known as transmission data)
  - 3)** Email must be managed as a Federal record
- c.** Electronic email systems do not identify records or ensure their proper retention therefore Federal employees and contractors are assigned the responsibility to manage, maintain, and dispose of email using their agency’s records schedule.
- d.** There is no single retention period for all electronic email records.
- e.** All government agencies must manage their electronic records in accordance with NARA regulations. This process includes: determining whether an email is a

Federal record, proper filing and retention of the email, and disposing of transitory email messages according to the agency's records schedule.

## **2. Maintaining and Preserving Electronic Mail.**

- a. **Determining Federal Records.** The first step in maintaining and preserving electronic mail is to determine if the electronic mail is a Federal Record. It is the responsibility of the sender and the person who receives the electronic mail to determine whether or not the message and the attachments meet the office's criteria of a Federal Record. Electronic mail that constitutes a Federal Record includes:
- 1) Electronic mail that contains substantive information that is necessary to adequately and properly document or provide evidence of the activities and functions of the agency.
  - 2) Electronic mail that provides key substantive comments on a draft action memorandum if the electronic mail message adds to a proper understanding of the formulation or execution of agency action.
  - 3) Electronic mail that provides documentation of significant agency decisions and promises reached orally either through person-to-person, telecommunication, or in conference.
  - 4) Electronic mail that conveys information of value on important agency activities if the electronic mail message adds to a proper understanding of agency operations and responsibilities.
  - 5) Electronic mail that documents the formulation and execution of basic policies and decisions.
  - 6) Electronic mail that documents important meetings.
  - 7) Electronic mail that denotes actions taken by agency officials and their successors.
  - 8) Electronic mail that makes possible a proper scrutiny by the congress or other duly authorized agencies of the Government.
  - 9) Electronic mail that protects the financial, legal, and other rights of agency and of persons directly affected by the Department's actions.
- b. **Electronic Mail that is a Federal Record** falls into three categories; *permanent records*, *temporary records*, and *transitory records*.

- 1) ***Permanent electronic mail:*** Messages that have sufficient value to warrant continued preservation by the Federal Government as part of the National Archives of the United States. Electronic mail is scheduled as permanent by a NARA approved Request for Records Disposition (SF 115) if the records have continuing documentary or evidential value of an agency's the organization and functions, or historical information on persons, things, problems and conditions. Permanent electronic mail can be scheduled as part of a larger series or as mail of a designated agency official.
- 2) ***Temporary electronic mail :*** Messages that NARA approves for either immediate disposal or for disposal after a specified period of time or an event in accordance with a NARA approved Request for Records Disposition or the General Records Schedules. Temporary records provide documentation of agency business processes or legal rights of the government or public, government accountability, or hold information of administration or fiscal value. Depending on the type of record, the retention period varies.
- 3) ***Transitory electronic mail records:*** Messages of short-term (180 days or less) interest, which has little or no documentary or evidential value. These records include:
  - a) Regular requests for information, and publications or copies of replies that do not require administrative action, policy decision, special compilation or research;
  - b) Copies of letters of transmittal that do not include additional information to that contained in the original material and the receipt copy of this material;
  - c) Quasi-official notices like memoranda and records that do not serve as the basis of official actions including holiday notices or charity appeals, bond campaigns and similar records;
  - d) Those records documenting routine activities and containing no substantive information or value, such as meeting notifications or visit schedules;
  - e) And task-list or "to-do" notifications that serves as a reminder of a required action.

c. **Retaining Electronic Mail:**

- 1) Electronic mail must be preserved for its retention period, however transitory, along with all essential transmission and receipt data.

Disposition of all electronic mail records will be made in accordance with authorized disposition schedules.

- 2) *Permanent and temporary electronic mail* are maintained and made available for office use by:
  - a) Printing the email message and filing in a recordkeeping system.
  - b) Filing the e-mail electronically when an electronic recordkeeping system is used. Note that organizations that choose to manage electronic recordkeeping systems must: be able to perform all the requirements of preservation and disposition through the application system itself, or copy electronic mail records into an electronic recordkeeping system able to perform all the functional requirements of the federal regulations.
- 2) *Transitory electronic mail* may be retained in the “live” email system.
  - a) NARA recently issued a “Final Rule on the Disposal of Transitory Email Records” providing agencies with guidance on defining and maintaining short-term electronic mail records. Under this rule, agencies are allowed to maintain and delete transitory email records from their live email systems without copy and transfer of these records into a recordkeeping system, providing users withhold deleting records before the expiration of the NARA-approved retention period and the email system’s automatic deletion rule ensures the preservation of records during this retention period.
  - b) If the “auto-delete” is set for 180 days, this may be applied to records with a shorter retention period as well; however, agencies are not allowed to use “auto-delete” for records with a retention period exceeding 180 days.
  - c) This new regulation provides agencies with an alternative process for managing transitory email; agencies may continue to create and file separate copies of all email records including transitory records in a recordkeeping system.

### **3. Retention and Disposition of electronic mail records**

- a. After electronic mail is determined to be a Federal record, the retention period is governed by NARA approved agency records control schedules or the General Records Schedule. Temporary records are held for defined periods of time awaiting destruction and permanent records are transferred to the National Archives for permanent preservation.

- b. Government employees and contractors who are uncertain about the disposition of electronic mail messages should contact their program office records officer or the agency records officer.
- c. If electronic mail items are Federal records, it is the responsibility of the agency employee to ensure a copy is preserved for agency files, unless it is a transitory email.
- d. Besides the text of electronic mail messages, electronic mail systems may provide record transmission and receipt data. Transmission data should be preserved with all electronic mail items classified as Federal records. Similar to a paper record, this information is necessary for a complete record.
- e. Electronic mail users should request receipt data when it is necessary for adequate and proper documentation of agency activities and in such instances when receipt data is associated with the record copy documenting these activities, the electronic mail message must be preserved.
- f. When using a paper recordkeeping system, the printed electronic mail with attachments must be annotated to document that it is the official file copy before being placed in the file system.

**4. Electronic mail received from external sources:** The procedures outlined above apply to all electronic mail received from nonagency and other outside sources.

**5. Electronic Mail Technical Issues:** Things to remember when preserving, maintaining, and disposing of electronic email records.

- a. Electronic email systems are not recordkeeping systems.
- b. An email archive is not a file system.
- c. Email transmission data is important.
- d. Federal employees and contractors must be trained to identify records and use the records schedule.
- e. Emails may still exist on backup after they are deleted from an individual's inbox.
- f. Emails, whether they are designated Federal records or not, are subject to FOIA and legal discovery.

## **6. NARA Memorandum to Federal Agency Contacts: Final Rule on the Disposal of Email Records:**

The National Archives and Records Administration recently issued a “Final Rule on the Disposal of Transitory Email Records” providing agencies with guidance on defining and maintaining short-term electronic mail records. As part of NARA’s Records Management Initiatives to redesign Federal Records Management, this rule authorizes agencies to dispose of short-term electronic mail (email) records without creating a separate paper or electronic recordkeeping copy as was required under NARA’s old regulation.

The general policy regarding electronic records requires all government employees and contractors by law to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency. Under the new regulation a *transitory electronic mail record* is defined generally as e-mail of short-term (180 days or less) interest, which has little or no documentary or evidential value. These records include: regular requests for information, and publications or copies of replies that do not require administrative action, policy decision, special compilation or research; copies of letters of transmittal that do not include additional information to that contained in the original material and the receipt copy of this material; semi-official notices like memoranda and records that do not serve as the basis of official actions including holiday notices or charity appeals and similar records; those records documenting routine activities and containing no substantive information or value, such as meeting notifications or visit schedules; and task-list or “to-do” notifications that serves as a reminder of a required action.

The rule follows a string of comments received by NARA concerning a similar draft proposal issued in November 2004. The comments expressed concern over the destruction of important documents with long-term significance, and urged NARA to require agencies to print out and retain all email records for fear of losing those records containing valuable information.

On the contrary, NARA questions whether previous email retention regulations requiring agencies to print out and file all email communications have contributed to the loss of valuable records due to the reluctance of government employees to maintain all transitory email communications. NARA concluded that this task is far too burdensome and costly, and that government employees will more likely take seriously their responsibility of retaining electronic records of permanent and long-term value, if they are not required to spend significant time and effort on retaining the high volume of transitory email records.

The final rule governing the maintenance of short-term electronic mail records is effective as of March 23, 2006, and will be incorporated in the records management regulations found on NARA’s website at <http://www.archives.gov/about/regulations/part-1234.html>.

